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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/836,484

04/17/2001

Lisette Cooper

11910-003001

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07/03/2006

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EXAMINER

CHENCINSKI, SIEGFRIED E

ART UNIT

PAPER NUMBER

3628

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/836,484

Applicant(s)

COOPER ET AL.

Examiner

Siegfried E. Chencinski

Art Unit

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 June 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-18, 22, 23 and 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-18, 22, 23 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 15, 2006 has been entered.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claims 14-18, 22, 23 & 28 are rejected** because the claimed invention is directed to non-statutory subject matter. The claims are not directed to any one of the areas of patentable subject matter, such as product, process, process of making or composition. In other words, the claims do not contain any new and useful process, machine, manufacture, or composition of matter, or useful, concrete or tangible result, or any new and useful improvement thereof. MPEP 706.03(a).

For a claim to be statutory under 35 USC 101 the following two conditions must be met:

1) In the claim, the practical application of an algorithm or idea results in a useful, concrete, tangible result,

AND

2) The claim provides a limitation in the technological arts that enables a useful, concrete, tangible result.

According to the above guidelines, Applicant's claims are limited to the manipulation of abstract ideas in the context of patentability.

Applicant is also advised not to add any new matter to the specification or the claims.

**3. Claims 14-18, 22, 23 & 28 are rejected under 35 U.S.C. 101** because the claimed invention is not supported by either a concrete and tangible asserted utility or a well established utility.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**4. Claims 14-18, 22, 23 & 28 are rejected under 35 U.S.C. 112, first paragraph.** Specifically, since the claimed invention is not supported by either a concrete and tangible asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

**5. Claims 14-18, 22, 23 & 28 are rejected under 35 U.S.C. 112, first paragraph,** as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The invention described well known computer automated

graphic display features available through a variety of off the shelf software packages or through customer software.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**6. Claims 14-18, 22, 23 & 28 are rejected under 35 U.S.C. 112, second paragraph**, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are one or more specific algorithm(s) which would permit the generation of concrete and useful results from applying the method. In the absence of such a concrete algorithm the ordinary practitioner would know what to do with the invention. Instead, the practitioner would turn to one of the many computer graphic software guides to refresh himself on the available display features and techniques used in the art.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**7. Claims 14-18, 22, 23 & 28 are rejected under 35 U.S.C. 103(a)** as being disclosed by Gatto (US PreGrant Publication 2003/0065601 A1) in view of Applicant disclosed prior art (hereafter AAPA), Official Notice, Microsoft Excel @ 5 Training Book (hereafter Excel) and Jones et al. (US Patent 6,021,397).

**Re. Claims 14-18, 22, 23 & 28**, Gatto, Jones, Makivic, Official Notice, AAPA, Morningstar.com, E\*Trade collectively disclose a wide variety of computer automatic graphic display of a variety of data output from mathematical algorithms related to

financial security market calculations regarding historical and projected data. Excel discloses one example of many general capabilities of off the shelf office software for graphically displaying data outputs of mathematical algorithms in many formats and geometric shapes with many notation capabilities. However, none of Gatto, Jones, Makivic, Official Notice, AAPA, Morningstar.com, E\*Trade or Excel explicitly disclose the exact method for use in a visualization system comprising the steps of:

**Re. Claims 14 & 28,**

- (a) generating data representing a trend line as a function of a provided performance measure at a succession of times prior to a date;
- (b) generating data representing at least one stripe, each stripe indicating odds of the performance measure being within displayed a corresponding range of potential values of the performance measure at a succession of times in the future;
- (c) each stripe beginning at the end of the trend line and becoming broader as it extends to times later than the date;
- (d) a boundary of each stripe varying as a function of time according to variations in the odds of the performance measure being within the range represented by the stripe as determined by an algorithm capable of producing predicted probability distributions; and
- (e) displaying the trend line and the stripes in the visualization system.

**Re. Claim 15,** in which the performance measure comprises a price of the asset.

**Re. Claim 16,** in which the performance measure comprises a return percentage.

**Re. Claim 17,** in which the performance measure comprises a tax-adjusted return percentage.

**Re. Claim 18,** in which generating data includes generating data representing two or more stripes each representing a different range of potential values of the performance measure, and displaying includes displaying each of the two or more stripes.

**Re. Claim 22**, in which each stripe includes two portions, one of the portions representing the odds prior to a second date based on one assumption, the other of the portions representing the odds after the second date based on another assumption.

**Re. Claim 23**, in which the second date is a date on which tax effects change from the one assumption to the other assumption.

Applicant states that claim 14 is exemplary of claim 28 (REMARKS submitted June 15, 2006, p. 8, ll. 32-33).

The Office Actions dated March 9, 2006 and September 9, 2005 established on the record the disclosures of Gatto, Jones, Makivic, Official Notice, AAPA (such as that of Morningstar.com and E\*Trade) that the above mentioned computer automated graphic displays of quantitative data displays of various algorithms were in widespread use in the financial securities industry.

The use of graphic displays of data was old, well known and a ubiquitous phenomenon at the time of applicant's invention. The computer revolution automated the art of graphic displays and put it on the computer screen and on computer printouts, first in a single color contrast on a background color (e.g. white on a dark grayish or black background), and then in a multiplicity of colors on a background of the user's choice. Some of the dramatic examples of this computer automation revolution are CAD/CAM, maps, computer animation, and the computer displays of tables, charts and graphs in all kinds of shapes, virtually any known geometric shape and other hand drawn shapes as well. The most well known softwares which came into the market place in the 1980's for the graphic and geometric display of data were Lotus123, Lotus Notes, Harvard Graphics, Excel and Adobe, among many others, along with other off the shelf and custom software systems. Several of these software systems have automated the process of creating basic free form mathematically related graphics and general art on a computer screen available in relatively inexpensive off the shelf packages to be run on the ordinary desk top or laptop PC. Applicant is referred to select pages of an independent EXCEL ® 5 training book as an example of what one of the simpler off the shelf software

packages was capable of prior to Applicant's invention directly related to Applicant's invention. The ordinary practitioner of the art would have been familiar with these capabilities at the time of Applicant's invention and also would have known that off the shelf and custom softwares were capable of all of the graphic display features in Applicant's invention. The ordinary practitioner also would have known that widespread use was being made in the financial arts of these very handy computer automated graphic displays of quantitative information of every kind being used by office, accounting, financial and investment clerks, financial managers, financial traders, investors of every level of sophistication and PhD academics in the financial arts alike.

Therefore, an ordinary practitioner of the art at the time of Applicant's invention would have found it as obvious to have combined the disclosures of Gatto with the art of Jones, Makivic, Official Notice, AAPA (such as that of Morningstar.com and E\*Trade) and Excel in order to produce a method for use in a visualization system comprising the steps of the above stated limitations of claims 14-18, 22, 23 & 28. The practitioner's motivation would have been based on the desire to provide users with improved tools for effectively viewing historical estimates, analytical projections and recommendations regarding financial assets such as securities (Gatto, [0008]).

### ***Response to Arguments***

8. Applicant's arguments filed on June 15, 2006 with respect to claims 14-18, 22, 23 & 28 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Siegfried Chencinski whose telephone number is (571)272-6792. The Examiner can normally be reached Monday through Friday, 9am to 6pm.



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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Hyung S. Souh, can be reached on (571) 272-6799.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this action should be mailed to:

*Commissioner of Patents and Trademarks, Washington D.C. 20231*

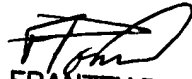
or (571)273-8300 [Official communications; including After Final communications labeled "Box AF"]

(571) 273-6792 [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to the address found on the above USPTO web site in Alexandria, VA.

SEC

June 23, 2006

  
FRANTZY POINVIL  
PRIMARY EXAMINER  
AU 3628